

Frank J. Rubino
Corporation Counsel for the City of Yonkers
40 South Broadway
City Hall, Room 300
Yonkers, New York 10701
By: Rory McCormick (RM 3994)
Associate Corporation Counsel

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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KARRIEM SMITH,

Plaintiff,

-against-

ANSWER

CITY OF YONKERS, CITY OF YONKERS POLICE
DEPARTMENT, JOHN and JANE DOES 1-10,
Individually and in their official capacities, (the names
John and Jane Doe being fictitious, as the true names
are presently unknown)

Index No. 08 CV 1835 (CLB)

Defendants.

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Defendants, THE CITY OF YONKERS and CITY OF YONKERS POLICE
DEPARTMENT by their attorney, FRANK J. RUBINO, Corporation Counsel of the City
of Yonkers, as and for its Answer to the Complaint respectfully allege as follows:

FIRST: Deny the allegations set forth in paragraphs "1", "2", "3", "4" and "5" of
the Complaint; except those portions containing conclusions of law which accordingly
require no response; and except admit that Plaintiff purports to proceed as stated therein.

SECOND: Denies knowledge or information sufficient to form a belief as to the
truth of any of the allegations set forth in the paragraphs designated "6", "9", "11", "12"
and "13" of the Complaint.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "8" and "10" of the Complaint and respectfully refers all questions of law to the Court.

FOURTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "14" and "15" of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE FIRST CAUSE OF ACTION

FIFTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "16" of the Complaint with the same force and effect as though fully set forth herein at length.

SIXTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "17", "18", "19", "20" and "21" of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE SECOND CAUSE OF ACTION

SEVENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "22" of the Complaint with the same force and effect as though fully set forth herein at length.

EIGHTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "23" and "24" of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE THIRD CAUSE OF ACTION

NINTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "25" of the Complaint with the same force and effect as though fully set forth herein at length.

TENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "26", "27" and "28" of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE FOURTH CAUSE OF ACTION

ELEVENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "29" of the Complaint with the same force and effect as though fully set forth herein at length.

TWELFTH: Denies upon information and belief, each and every allegation set forth in paragraph designated "30" of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE FIFTH CAUSE OF ACTION

THIRTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "31" of the Complaint with the same force and effect as though fully set forth herein at length.

FOURTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “32” and “33” of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE SIXTH CAUSE OF ACTION

FIFTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “34” of the Complaint with the same force and effect as though fully set forth herein at length.

SIXTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “35”, “36”, “37”, “38”, “39”, “40”, “41”, “42a”, “42b”, “42c” and “43” of the Complaint and respectfully refers all questions of law to the Court.

SEVENTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “44” of the Complaint with the same force and effect as though fully set forth herein at length.

EIGHTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated “45” of the Complaint; except admit receipt of a paper purporting to be a notice of claim and respectfully refers all questions of law to the Court.

NINETEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs

designated “47”, “48” and “49” of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE SEVENTH CAUSE OF ACTION

TWENTIETH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “50” of the Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-FIRST: Denies upon information and belief, each and every allegation set forth in paragraphs designated “51” and “52” of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE EIGHTH CAUSE OF ACTION

TWENTY-SECOND: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “53” of the Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-THIRD: Denies upon information and belief, each and every allegation set forth in paragraphs designated “54” and “55” of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE NINTH CAUSE OF ACTION

TWENTY-FOURTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “56” of the Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-FIFTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "57", "58", "59", "60" and "61" of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE TENTH CAUSE OF ACTION

TWENTY-SIXTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "62" of the Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-SEVENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "63" and "64" of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE ELEVENTH CAUSE OF ACTION

TWENTY-EIGHTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "65" of the Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-NINTH: Denies upon information and belief, each and every allegation set forth in paragraph designated "66" of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE TWELFTH CAUSE OF ACTION

THIRTIETH: Defendants repeat and reiterate each and every

admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "67" of the Complaint with the same force and effect as though fully set forth herein at length.

THIRTY-FIRST: Denies upon information and belief, each and every allegation set forth in paragraph designated "68" of the Complaint and respectfully refers all questions of law to the Court.

ANSWERING THE THIRTEENTH CAUSE OF ACTION

THIRTY-SECOND: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "69" of the Complaint with the same force and effect as though fully set forth herein at length.

THIRTY-THIRD: Denies upon information and belief, each and every allegation set forth in paragraph designated "70" and "71" of the Complaint and respectfully refers all questions of law to the Court.

THIRTY-FOURTH: Deny all allegations in the "Wherefore" portion of the Complaint, except those conclusions of law which accordingly require no response; and except admit that Plaintiff purports to proceed as stated therein.

AS AND FOR A FIRST DEFENSE:

THIRTY-FIFTH: That if any physical force was used to effect the arrest of the plaintiff, only such physical force was used to the extent it was reasonably believed to be necessary to effect the arrest of the plaintiff, whom the arresting officer reasonably believed to have committed an offense.

AS AND FOR A SECOND DEFENSE:

THIRTY-SIXTH: That the plaintiff's arrest and prosecution were not effectuated falsely, maliciously or without probable cause. On the contrary, there was reasonable and just cause for believing the plaintiff guilty of a criminal act and in arresting and prosecuting the plaintiff, the Defendant CITY OF YONKERS, was not actuated by malice nor were any of its agents, servants and/or employees so actuated.

AS AND FOR A THIRD DEFENSE:

THIRTY-SEVENTH: Defendants' actions were in good faith and for good cause including, but not limited to, legitimate, rational, and appropriate governmental interests.

AS AND FOR A FOURTH DEFENSE:

THIRTY-EIGHTH: Injuries and damages to the plaintiff were caused in whole or in part or were contributed to by the culpable conduct and want of care on the part of plaintiff.

AS AND FOR A FIFTH DEFENSE:

THIRTY-NINTH: Defendant City of Yonkers Police Department is improperly sued in this action when the Police Department is merely a department of the City of Yonkers.

AS AND FOR A SIXTH DEFENSE:

FORTIETH: At all times relevant to the Complaint, defendants have been in compliance with all requirements under the laws cited by the Complaint.

AS AND FOR A SEVENTH DEFENSE:

FORTY-FIRST: Plaintiff failed to comply with Section 50-h of the General Municipal Law of the State of New York.

AS AND FOR A EIGHTH DEFENSE:

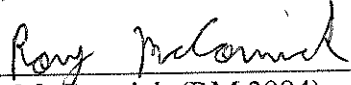
FORTY-SECOND: The Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, defendants request judgment dismissing the Complaint together with costs, disbursements, and attorneys' fees and any other relief the Court deems just and proper.

Dated: Yonkers, New York
May 29, 2008

Yours, etc.,
FRANK J. RUBINO
Corporation Counsel
Attorney for Defendant
THE CITY OF YONKERS
City Hall, Room 300
Yonkers, New York 10701
(914) 377-6256

By:


Rory McCormick (RM 3994)
Associate Corporation Counsel


TO: Leventhal & Klein, LLP
45 Main Street, Suite 230
Brooklyn, New York 11201

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2008 I caused a true and correct copy of the foregoing ANSWER to be served by mail upon:

Leventhal & Klein, LLP
45 Main Street, Suite 230
Brooklyn, New York 11201

Dated: May 29, 2008
Yonkers, New York



Rory McCormick